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Bank of America, N.A.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DONALD OKADA, an individual,
Plaintiff,

VS.

BANK OF AMERICA, N.A.; SELECT
PORTFOLIO SERVICING; NATIONAL
DEFAULT SERVICING
CORPORATION AND: DOES 1-50.

Defendants.

Case No. 8:15-cv-00981-CJC-E

**DEFENDANT'S REQUEST FOR
JUDICIAL NOTICE IN SUPPORT
OF MOTION TO DISMISS
PURSUANT TO FED. R. CIV. PRO.
12(B)(6)**

Date: August 3, 2015
Time: 1:30 P.M.
Place: Courtroom 9B
Compl. Filed: May 11, 2015
Compl. Removed: June 18, 2015

Honorable Cormac J. Carney

[Filed concurrently with Notice of Motion, Motion to Dismiss, and Proposed Order; and Certificate of Interested Parties]]

1 **TO THE COURT, PLAINTIFF AND HIS COUNSEL:**

2 Defendant Bank of America, N.A. (“BANA” or “Defendant”) respectfully
3 requests that the Court take judicial notice of the following documents in support of
4 Defendant’s Motion to Dismiss the Complaint of Plaintiff Donald Okada (“Plaintiff”):

- 5 • **Exhibit A:** Deed of Trust, related to the property located at 316-
6 316 1/2 Iris Avenue, Newport Beach, CA 92625, recorded on
7 November 17, 2006 in the Orange County Recorder’s Office, as
8 Document No. 2006000781337. A true and correct copy is
9 attached as Exhibit A.
- 10 • **Exhibit B:** Deed of Trust and Assignment of Rents, related to the
11 property located at 316-316 1/2 Iris Avenue, Newport Beach,
12 CA 92625, recorded on November 17, 2006 in the Orange
13 County Recorder’s Office, as Document No. 2006000781338. A
14 true and correct copy is attached as Exhibit B.
- 15 • **Exhibit C:** Assignment of Deed of Trust, related to the Deed of
16 Trust in Exhibit A, recorded on June 22, 2011 in the Orange
17 County Recorder’s Office, as Document No. 2011000304326. A
18 true and correct copy is attached as Exhibit C.
- 19 • **Exhibit D:** Notice of Default and Election to Sell Under Deed of
20 Trust, related to the Deed of Trust in Exhibit A, recorded on
21 August 5, 2011 in the Orange County Recorder’s Office, as
22 Document No. 2011000384179. A true and correct copy is
23 attached as Exhibit D.
- 24 • **Exhibit E:** Notice of Trustee’s Sale, related to the Notice of
25 Default in Exhibit D, recorded on November 10, 2011 in the
26 Orange County Recorder’s Office, as Document No.
27 2011000571664. A true and correct copy is attached as Exhibit
28 E.

- 1 • **Exhibit F:** Notice of Rescission of Declaration of Default,
2 related to the Notice of Default in Exhibit D, recorded on
3 December 19, 2013 in the Orange County Recorder's Office, as
4 Document No. 2013000698301. A true and correct copy is
5 attached as Exhibit F.
- 6 • **Exhibit G:** Notice of Default and Election to Sell Under Deed of
7 Trust, related to the Deed of Trust in Exhibit A, recorded on
8 February 27, 2015 in the Orange County Recorder's Office, as
9 Document No. 2015000105792. A true and correct copy is
10 attached as Exhibit G.
- 11 • **Exhibit H:** Complaint filed by Donald Okada on January 11,
12 2013 in the Superior Court of California, County of Orange, as
13 case number 30-2013-00623493-CU-OR-CJC. A true and correct
14 copy is attached as Exhibit H.
- 15 • **Exhibit I:** Request for Dismissal, filed on March 25, 2013,
16 related to the Complaint in Exhibit H. A true and correct copy is
17 attached as Exhibit I.
- 18 • **Exhibit J:** Notice of Pendency of Action, filed on January 14,
19 2013 related to the Complaint in Exhibit H. A true and correct
20 copy is attached as Exhibit J.
- 21 • **Exhibit K:** Notice of Pendency of Action, filed on January 16,
22 2013 related to the Complaint in Exhibit H. A true and correct
23 copy is attached as Exhibit K.
- 24 • **Exhibit L:** Withdrawal of Lis Pendens, filed on March 29, 2013
25 related to the Notice of Pendency of Action in Exhibit J and
26 Exhibit K. A true and correct copy is attached as Exhibit L.

27 In deciding whether to dismiss a claim under Federal Rule of Civil Procedure
28 12(b)(6), the Court is generally limited to reviewing only the complaint, but may

1 review materials which are properly submitted as part of the complaint and may take
 2 judicial notice of public records outside the pleadings. *See Gonzalez v. First Franklin*
 3 *Loan Services*, 2010 WL 144862, at *3 (E.D. Cal. Jan. 11, 2010) (citing *Lee v. City of*
 4 *Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001); *Campanelli v. Bockrath*, 100 F.3d
 5 1476, 1479 (9th Cir. 1996); *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th
 6 Cir. 1986).

7 Pursuant to Federal Rule of Evidence 201, the Court may take judicial notice of
 8 adjudicative facts, which are “either (1) generally known within the territorial
 9 jurisdiction of the trial court, or (2) capable of accurate and ready determination by
 10 resort to sources whose accuracy cannot reasonably be questioned.” Fed. Rule Evid.
 11 201(b). In addition, “documents whose contents are alleged in a complaint and whose
 12 authenticity no party questions, but which are not physically attached to the pleading,
 13 may be considered in ruling on a Rule 12(b)(6) motion to dismiss.” *Branch v.*
 14 *Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994) overruled in part on other grounds by
 15 *Galbraith v. County of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002) (“[A] document is
 16 not ‘outside’ the complaint if the complaint specifically refers to the document and if
 17 its authenticity is not questioned”; a court may properly consider such document in
 18 ruling on a motion to dismiss). A court may also take judicial notice of facts “capable
 19 of accurate and ready determination” by reliable sources. *See* Fed. Rule Evid. 201(b);
 20 *see also United States v. Mariscal*, 285 F.3d 1127, 1131 (9th Cir. 2002).

21 Accordingly, the Court may take judicial notice of Exhibits A through L.
 22 because each is a matter of public record, as each was recorded in the Official Records
 23 of Los Angeles County, California. *See Montes v. Quality Loan Service Corp.*, 2010
 24 WL 114485, at *1 (C.D. Cal. Jan. 5, 2010) (taking judicial notice of plaintiff’s Deed
 25 of Trust and facts contained therein because a Deed of Trust is “capable of accurate
 26 and ready determination by resort to sources whose accuracy cannot reasonably be
 27 questioned”). Further, this Court may also take judicial notice of the documents filed
 28 in *Greenspan v. Bank of America Corporation, et al.*, Los Angeles Superior Court,

1 Case no. BC501557 (2013) (*see* Exhibits H through I), because they are a matter of
2 public record and capable of accurate and ready determination by resort to sources
3 whose accuracy cannot reasonably be questioned.

4 Thus, this Court may take judicial notice of **Exhibits A through L** because
5 each exhibit is a matter of public record, and because each is referenced or forms the
6 basis of Plaintiff's adversary Complaint.

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8 DATED: June 25, 2015 REED SMITH LLP

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10 By: /s/ Alexander J. Gershen

11 Alexander J. Gershen (SBN 291929)
12 Attorney for Defendant Bank of America,
13 N.A.
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